IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2730 of 2004
with
SPECIAL CIVIL APPLICATION No 2731 of 2004
and
SPECIAL CIVIL APPLICATION No 4136 of 2004

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT
and
HON'BLE MR.JUSTICE S.R.BRAHMBHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ROYAL IMPEX (INDIA)

Versus

STATE OF GUJARAT & OTHERS

Appearance:
1. Special Civil Application No. 2730 of 2004
MR TV SHAH for the Petitioner
MR SN SHELAT, ADVOCATE GENERAL with MS MAITHILI MEHTA for the Respondents

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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT
and
HON'BLE MR.JUSTICE S.R.BRAHMBHATT

Date of decision: 24/02/2005

COMMON ORAL JUDGEMENT

(Per : HON'BLE MISS JUSTICE R.M.DOSHIT)

Heard the learned advocates.

The petitioners in Special Civil Applications Nos.2730 and 2731 of 2004 challenge the order of reassessment made by the Sales-tax Officer calling upon the respective petitioner to pay sales-tax under the Gujarat Sales-tax Act, 1969 (hereinafter referred to as "the Act") on sale of "DEPB" (Duty Entitlement Pass Book).

The petitioner in Special Civil Application No.1436 of 2004 challenges the notice of demand dated 23rd July, 2002 calling upon the said petitioner to produce the relevant materials and the reminder dated 16th June, 2003.

Learned advocate Mr.Shah has submitted that the Commissioner of Sales-tax has, in exercise of power of determination under Section 62 of the Act, held the DEPB to be the goods exigible to sales-tax under the Act. In view of the said order made under Section 62 of the Act the petitioners have no other remedy but to approach this Court under Article 226 of the Constitution of India. He has submitted that the DEPB is not the goods for sale of which the petitioner shall be liable to pay sales-tax under the Act. He has also submitted that in Special Civil Application No.2730 and 2731 of 2004 the concerned petitioner had raised a categorical averment before the Sales-tax Officer that the concerned petitioner was engaged in the business of export; that exports were made from Mumbai and the sale of DEPB also was made from Mumbai. The concerned petitioner was, therefore, not liable to pay tax to the State of Gujarat under the Act. Nevertheless, without considering the said contention the concerned petitioner has been held liable to pay tax under the Act as assessed by the Sales-tax Officer. Mr.Shah has also submitted that against the impugned order of reassessment the said petitioners did prefer appeal. However, pending the appeal no order of stay or waiver was made by the appellate authority. The petitioners are, therefore, constrained to approach this Court under Article 226 of the Constitution of India. He has also submitted that a Bench of this Court having entertained and admitted the writ petitions, the petitioners now shall not be relegated to the alternative remedy under the Act. In support of his case, Mr.Shah has relied upon the judgments in the matters of New Manek Chowk Spg. and Wvg. Mills Co. Ltd., etc. v/s.

Municipal Corporation of the City of Ahmedabad and others [AIR 1967 SC 1801]; of Century Spinning & Manufacturing Co. Ltd. and another v/s. The Ulhasnagar Municipal Council and another [AIR 1971 SC 1021]; and of Navsarjan Trust v/s. Ahmedabad Municipal Corporation and another [AIR 2002 GUJARAT 243].

We see no substance in either of the contentions raised by Mr.Shah. The petitioners had efficacious statutory remedy under the Act. The petitioners having availed of the same, the present petitions under Article 226 of the Constitution of India shall not be maintainable. Besides, the petitions involve disputed question of facts i.e. whether the petitioners have any business in the State of Gujarat or not. Such disputed question of facts cannot be decided in a petition under Article 226 of the Constitution of India. The Special Civil Application No.4136/2004 is also premature as no order adverse to the petitioner has been made as yet. All that the said petitioner was called upon was to produce certain records that too as far back as on 23rd July, 2002.

In above view of the matter we are of the opinion that neither of these petitions is maintainable. Petitions are, therefore, dismissed with cost. Rule nisi issued in each petition is discharged. Interim relief stands vacated. The advocate's fee for the purpose of cost in Special Civil Application No.4136/2004 is quantified at Rs.5,000=00.

It is clarified that each petitioner shall be at liberty to avail of the statutory remedy under the Act.

Learned advocate Mr.Shah requests that the ad-interim relief be continued for some time. Request is rejected.

Registry shall maintain copy of this order in each petition.

(Ms. R.M.Doshit, J.)

(S.R.Brahmbhatt, J.)

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